

FILED

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

MAR 02 2015

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 14N-00168

PETITIONER,

Vs.

CASE NO.


Administrator



RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing convened before the undersigned at 2:15 p.m. on February 18, 2015, at 

APPEARANCES

For the Petitioner: Anthony J. DePalma, Esq.
Curtis Filaroski, Esq.
Disability Rights Florida

For the Respondent: Natalie J. Storch, Esq.
Sawyer & Sawyer, PA

STATEMENT OF ISSUE

At issue is whether respondent's intent to discharge petitioner from their facility due to nonpayment is proper.

PRELIMINARY STATEMENT

By notice dated October 31, 2014 respondent informed petitioner they were seeking to discharge her from the facility due to nonpayment after reasonable and appropriate notice to pay. Petitioner timely requested a hearing to challenge the discharge.

The administrative hearing was set to convene on January 21, 2015. On January 14, 2015 the undersigned received PETITIONER'S MOTION FOR CONTINUANCE. The continuance was granted; the hearing was convened on February 18, 2015.

Petitioner was present and provided testimony. [REDACTED] petitioner's friend, appeared as an observer. Witnesses appearing for the respondent from [REDACTED] were: [REDACTED] administrator, [REDACTED] director of social services, [REDACTED] director of nursing. [REDACTED] attending Medical Physician at [REDACTED] [REDACTED] also appeared as a witness. Appearing by telephone from the Agency of Health Care Administration (AHCA) were: Theresa DeCanio, field office manager, Lisa Sanchez, senior human program specialist and Lija Sherer, health facility supervisor.

Petitioner submitted four exhibits into evidence, entered as Petitioner's Exhibits "1" through "4". Administrative notice was taken of:

Fla. Stat. sections 400.022, 400.0255, 400.145, and 400.165.
42 C.F.R. § 483.12.
42 U.S.C. § 1396r.
Fla. Admin. Code R. 59A-4.106 and 59A-4.109.
Centers for Medicare & Medicaid Services' State Operations Manual, pp 55-64, Appendix "PP".

Respondent submitted six exhibits into evidence, entered as Respondent Exhibits "1" through "6". The onsite result from AHCA was entered as Hearing Officer Exhibit "1". The record was closed on February 18, 2015.

FINDINGS OF FACT

1. Petitioner, age 49 (date of birth [REDACTED]), was admitted to [REDACTED] on April 12, 2014; from [REDACTED] for knee therapy due to a knee operation. Prior to being at [REDACTED] petitioner resided in another nursing facility; petitioner was unsure of the nursing facility name.
2. Petitioner was admitted to [REDACTED] under Medicare coverage until June 9, 2014. Petitioner was transitioned to Medicaid Institutional Care Program (ICP) coverage in June 2014; her ICP patient responsibility was \$520 monthly. Petitioner has not made any payments to the facility for her stay since she was admitted; unpaid balance as of January 31, 2015 is \$4,048.62.
3. Respondent provided a Collection Documentation Sheet; used in course of business and authenticated [REDACTED], administrator. The following entries are relevant to bill collection attempts.

<u>Date</u>	<u>Action Taken</u>
05/06/14	Met with petitioner to discuss applying for Medicaid coverage.
06/14/14	Payer change Medicare to Medicaid 6/11/14 received letter from DCF showing approved and what to pay facility.
06/17/14	Met with petitioner to discuss applying for Medicaid and RFMS. She stated she was leaving and did not need help with anything.
08/20/14	Statement given to petitioner.
09/04/14	Attempt to speak with petitioner; she was not in the facility. Note provided requesting to speak with her on 9/5/14.
09/05/14	Attempt to speak with petitioner. Petitioner "left letter under the door".

09/23/14	Statement given to petitioner.
10/13/14	Attempt to speak with petitioner; she was not in the facility.
10/14/14	Petitioner wrote facility a letter.
10/15/14	Attempt to speak with petitioner; she was leaving the facility.
10/21/14	Meet with petitioner to discuss non-payment.
10/22/14	Statement given to petitioner.

4. Petitioner's letter to the facility, dated September 4, 2014, in part reads:

Please direct all my Medicaid concerns to my [REDACTED] Medicaid provider case manager – Dawn. Please treat me like any other person you would like to meet with in the future – ask if I have availability at least a week in advance in regards to my “so called” patient responsibility... Any person going back into the community is allowed by state federal regulations to keep their income – the “patient responsibility does not apply to them. I don't eat here...

5. Petitioner's letter to the facility, dated October 1, 2014, in part reads:

1) I am disputing the bill you gave me. I don't eat here, I have medical expenses I pay monthly outside of [REDACTED]
2) Even if I thought I owed you that money you're not right for dating it Sept. 19. Delivering it Sept 30 and expecting it to be paid Oct. 3rd...

6. On October 31, 2014 respondent gave petitioner a Nursing Home Transfer and Discharge Notice; reason “Your bill for services at this facility has not been paid after reasonable and appropriate notice to pay.” Petitioner did not sign the notice.

7. Respondent's witnesses testified that petitioner is independent and frequently leaves the facility for long periods of time.

8. Petitioner agreed that she frequently leaves the facility.

9. Petitioner testified she has been on Medicaid and other nursing facilities for “many many” years prior to her admittance at [REDACTED] and she is very familiar with the patient responsibility. Petitioner testified that she has never paid her patient responsibility (including [REDACTED]). Petitioner believes if Medicare covers all expenses at nursing facilities; Medicaid should also cover all expenses.

10. Petitioner asserts she had never received a Notice of Case Action (NOCA) from the Department of Children (DCF) notifying her of her patient responsibility; or billing statements from the facility until October 2014. Petitioner was unsure of the date; she thought it was either October 13, 2014 or October 31, 2014.

11. The NOCA petitioner asserts receiving in October 2014 is dated June 11, 2014 and addressed to petitioner at a [REDACTED], Florida address; it indicates her patient responsibility is \$590. The NOCA in part states:

This is the amount you pay for your cost of care each month after a deduction from your income for your personal needs and out-of-pocket medical expenses (if reported)...
If you are paying private health insurance premiums (other than Medicare) or paying out-of-pocket medical expenses that are not covered by a third party or Medicaid, we may be able to include a deduction for these expenses in your budget and reduce the amount you pay the nursing home or hospice provider for your care each month...

12. Petitioner asserts she did not pay her patient responsibility to [REDACTED] because her out-of-pocket expenses "gave her permission to do so". However, she never submitted the medical expenses to DCF, alleging "she was too ill". Petitioner asserts that she has indirectly paid her patient responsibility to [REDACTED] by "giving a ton of heat pads, massages, chloraseptic, and a telephone to her ex-roommate".

13. Petitioner provided a letter she wrote to the facility dated October 13, 2014. The letter reads in part:

I told you about my medical expenses – you did nothing to assist me in reporting them... Thanks for the info – line (1) states "This is the amount (\$590 – Feb- etc.) you pay the facility for your cost of care each month, after a deduction from your income for your personal needs and your out-of-pocket medical expenses (if reported). I reported expenses to you verbally – I think you know my next step..."

14. Petitioner provided a letter she wrote to the facility dated October 15, 2014. The letter reads in part:

.. [REDACTED] – administrator – woke me up with a 30 day notice...
They are aware I'm using my money for personal and medical needs and food – I don't eat here often...

15. Petitioner provided a letter she wrote to the facility dated October 31, 2014. The letter reads in part:

A) Your transfer discharge notice is in dispute – I disagree of it because:
1) The bill you say I owe was not provided in a reasonable and appropriate fashion.
a) The first one was for \$2,500 and a demand to pay in 3 days.
b) The second one was a week or so later – mid Oct. - with demand to pay immediately. You can't get \$2,500 - \$3,000 from someone whose income is \$625 in that month. The demand is unreasonable...

16. AHCA completed an on onsite inspection at [REDACTED] on December 18, 2014. AHCA was unable to speak with petitioner on December 18, 2014 because she was not in the facility. The inspection revealed the facility provided petitioner with monthly billing statements. No deficiencies were identified as a result of the inspection.

CONCLUSIONS OF LAW

17. The Department of Children and Families, Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to s. 400.0255(15), Fla. Stat. In accordance with that section this order is the final administrative decision of the Department of Children and Families. The burden of proof is clear and convincing evidence and is assigned to the respondent.

18. Federal Regulations appearing 42 C.F.R. § 483.12, sets forth the reasons a facility may involuntarily discharge a resident as follows: Admission, transfer and discharge rights.

(a)(2) Transfer and discharge requirements. The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless--

(i) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(ii) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(iii) The safety of individuals in the facility is endangered;

(iv) The health of individuals in the facility would otherwise be endangered;

(v) The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid; or

(vi) The facility ceases to operate.

19. In accordance with the above authority respondent requested that the petitioner be discharged from the facility as she has failed, after reasonable and appropriate notice, to pay for stay at the facility. Respondent's evidence indicates they attempted to meet with petitioner regarding pay for stay starting in May 2014; and provided petitioner billing statements beginning in September.

20. Petitioner argued that respondent did not provide a billing statement until October 2014. However, petitioner's letter to the facility, dated September 4, 2014, indicates she requires at a week in advance to discuss her "so called" patient responsibility.

21. Petitioner testified being very familiar with the patient responsibility; her position is if Medicare covers all expenses at nursing facilities, Medicaid should also cover all expenses.

22. Petitioner argued that she did not pay her patient responsibility because her out-of-pocket expenses "gave her permission to do so". However, petitioner never submitted medical expenses to DCF, alleging she was too ill. Petitioner further argued that she indirectly paid her patient responsibility by "giving a ton of heat pads, massages, chloraseptic, and a telephone to her ex-roommate".

23. The AHCA completed an onsite inspection of the facility to determine if the facility complied with the requirements of 42 C.F.R. § 483.12 in taking action to discharge a resident. AHCA was unable to interview petitioner during their inspection due to petitioner not being at the facility. No deficiencies were identified as a result of the inspection.

24. In careful review the evidence and cited authority, the undersigned concludes respondent gave petitioner reasonable and appropriate notice to pay for stay at the facility. The undersigned finds the facility's action to discharge the petitioner is in accordance with federal regulations.

25. Any discharge by the nursing facility must comply with all applicable federal regulations, Florida Statutes, and Agency for Health Care Administration requirements. Due to the hearing officer's lack of jurisdiction, the discharge location or the discharge planning process was not addressed. Should petitioner have concerns about the appropriateness of the discharge location or the discharge planning process; she may contact the Agency for Health Care Administration's health care facility complaint line at (888) 419-3456.

DECISION

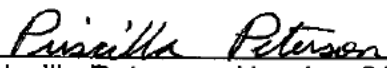
Based upon the forgoing Findings of Fact and Conclusion of Law, the petitioner's appeal is denied. The respondent's action to discharge the petitioner is in accordance with federal regulations. The respondent may proceed with the discharge, as described in the Conclusions of Law and in accordance with applicable Agency for Health Care Administration requirements.


NOTICE OF RIGHT TO APPEAL


The decision of the hearing officer is final. Any aggrieved party may appeal the decision to the district court of appeals in the appellate district where the facility is located. Review procedures shall be in accordance with the Florida Rules of Appellate Procedure. To begin the judicial review, the party must file one copy of a "Notice of Appeal" with the Agency Clerk, Office of Legal Services, Bldg. 2, Rm. 204, 1317 Winewood Blvd., Tallahassee, FL 32399-0700. The party must also file another copy of the "Notice of Appeal" with the appropriate District Court of Appeal. The Notices must be filed within thirty (30) days of the date stamped on the first page of the final order. The petitioner must either pay the court fees required by law or seek an order of indigency to waive those fees. The department has no funds to assist in this review, and any financial obligations incurred will be the party's responsibility.

DONE and ORDERED this 2nd day of March, 2015,

in Tallahassee, Florida.


Priscilla Peterson, Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
Office: 850-488-1429
Fax: 850-487-0662
Email: Appeal_Hearings@dcf.state.fl.us

Copies Furnished To:  Petitioner

 Respondent
Ms. Theresa DeCanio, Agency for Health Care Administration
Natalie J. Storch, Esq.
Anthony J. DePalma, Esq.
Curtis Filaroski, Esq.